REMARKS

Claims 1-6 and 8-10 were presented, examined and stand rejected. In response, no claims are amended, no claims are added and no claims are cancelled. Claim 7 was previously cancelled. Claims 1-6 and 8-10 remain. Applicant requests reconsideration of the application in view of the following remarks.

I. Claims Rejected under 35 U.S.C. §103

Claims 1-6 and 8-10 are rejected under 35 USC §103(a) as being unpatentable over U.S. Publication No. 2003/0028641issued to Zhang et al. ("Zhang") in view of U.S. Publication No. 2004/0028054 of Khurana et al. ("Khurana") further in view of U.S. Publication No. 2001/0055314 of Suzuki et al. ("Suzuki").

In this Action, the Examiner has maintained the rejection of record but has cited a new reference, Suzuki, to meet the added claim limitation "wherein the calculated amount takes into account an average of time intervals at which allocation of additional bandwidth is request from the bandwidth broker." Specifically, the Examiner cites to Figure 1A, paragraph [0069] of Suzuki to provide the necessary teaching with respect to this limitation. Suzuki does not provide the necessary teaching for the following reasons.

The present invention is directed to a method of performing adaptive connection admission control in consideration of input call states in a DIFFSERV network which includes a bandwidth broker. The need for DIFFSERV networks which utilize bandwidth brokers has arisen due to new application services requiring quality of service (QoS) guarantees such as Internet broadcasting, voice-over internet protocol and virtual private network as discussed in paragraph [0004] of the present application. Although the claims do not expressly recite the need for QoS, the claims do expressly refer to a DIFFSERV network including a bandwidth broker to provide QoS guarantees. Thus, according to the claims, there is interactivity between the bandwidth broker and ingress edge nodes, which compare an amount of remaining bandwidth allocated to a specific path within an amount of bandwidth required for a connection setup to calculate an amount of additional bandwidth to be requested from the bandwidth broker if it is determined that the remaining amount of bandwidth does not satisfy the amount required for the connection setup requesting call.

Suzuki on the other hand, while directed to a dynamic bandwidth assignment system, does not appear to be in any way concerned with the DIFFSERV networks, ingress nodes or a bandwidth broker.

Suzuki relates to full service access networks (FSAN) and Asynchronous Transfer Mode-Passive Optical Networks (ATM-PON) and particularly to a dynamic bandwidth assignment system and method for carrying out dynamic bandwidth assignment of the uplink band from a network termination to a network unit in these networks (*see*, paragraph [0001]). Further, as shown in Figure 1A, and as explained in paragraph [0069], network unit 18 assigns cell slots and makes a decision on the increase in the number of cell slots at the end of each frame after the network termination increases its necessary bandwidth. When network unit 18 cannot determine the amount of increase in the number of cell slots at the end of the frame, it makes a decision on the cell slots at the end of the next frame. Thus, it should be apparent that network unit 18 is not a bandwidth broker as disclosed and claimed by Applicants, and while it may perform certain calculations, it is not provided with an amount of additional bandwidth which is calculated by an ingress edge node which is to be requested from the bandwidth broker.

According to MPEP §2142

> [t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that 'rejections on obviousness cannot be sustained with mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.' *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval).

Further, according to MPEP §2143, "[T]he Supreme Court in *KSR International Co. v. Teleflex, Inc.* 550 U.S. ___, ___, 82 USPQ2d 1395-1397 (2007) identified a number of rationales to support a conclusion of obviousness which are consistent with the proper "functional approach" to the determination of obviousness as laid down in *Graham.*" Further, according to MPEP §2143.01, [o]bviousness can be established by combining or modifying the teachings of

the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006). Further, "[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art." *KSR International Co. v. Teleflex, Inc.* 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007), and *Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103*, Section III(D), issued by the U.S. Patent and Trademark Office on October 10, 2007. MPEP §2142 further provides:

> [a] statement that modification of the prior art to meet the claimed invention would have been "well within the ordinary skill of the art at the time the claimed invention was made" because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Pat. App. & Inter. 1993).

Although the prior art, such as Zhang, does disclose a bandwidth broker, modifying the teachings of Zhang and/or Khurana, utilizing the teachings of Suzuki, does not teach a corresponding ingress edge node which calculates an amount of additional bandwidth to be requested from the bandwidth broker taking into account an average of time intervals at which allocation of additional bandwidth is requested from the bandwidth broker as required by the claims. Thus, the Examiner has based the obviousness rejection without some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness as required.

Accordingly, since the remaining claims depend from Claim 1, reconsideration and withdrawal of the rejection to Claims 1-6 and 8-10 under 35 USC 103(a) as being unpatentable over Zhang, in view of Khurana and Suzuki, is respectively requested.

Accordingly, Applicant submits that the claims pending following entry of this amendment, namely Claims 1-6 and 8-10, are now in condition for allowance, which early action is requested.

CONCLUSION

If there are any fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. If a telephone interview would expedite the prosecution of this Application, the Examiner is invited to contact the undersigned at (310) 207-3800.

Respectfully submitted,

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Dated: July 13, 2009

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CERTIFICATE OF TRANSMISSION
I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below to the United States Patent and Trademark Office.

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Marilyn Bass July 13, 2009